

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.6517 OF 2004

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Deepak Vasudev Wadkar ...Petitioner

v/s.

Vithal Mahadev Wadkar & ors. ...Respondents

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Shri A.S.Khandeparkar i/b M/sKhandeparkar &
Associates for the Petitioner.

None for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 4TH JULY, 2007

P.C.:

1. This petition is directed against the order of

the trial court by which the trial court had granted an application filed by the Respondent No.6 for being joined as a defendant in the suit. The Plaintiff has filed the suit claiming that the father of the Plaintiff and the defendant No.1, who is uncle of the Plaintiff, were joint owners of the land and construction thereon. In the suit a decree of partition is sought. The father of the Plaintiff and the Defendant No.1 were real brother. Defendant No.6 is the real sister of Defendant No.1 and father of the Plaintiff. The claim of the Plaintiff is that the father of the Plaintiff and the Defendant No.1 became joint owners of the property on the basis of the pursis that was filed in a suit by Defendant No.5 claiming a decree of declaration.

2. The case of the Respondent No.6 appears to be that the house was constructed not by Defendant No.1 and father of the Plaintiff, but by her father and therefore she may have share in the property. Thus, the Respondent No.6 cannot be said to be a total stranger. If she is joined as the Defendant she may be able to file counter claim seeking partition of the property and share in the property.

3. The power of the court to direct the joinder of party is to be exercised in the interest of justice and for the purpose of deciding the entire controversy before the court the power of the court to direct the joinder of party is also discretionary. In my opinion, as the power is discretionary and it has been exercised by the court in favour of joining a party, and the party who has directed to be joined is also not a stranger, she is aunt of the Plaintiff and it is possible that if she succeeds in showing that the house was constructed not by the Defendant No.1 and father of the Plaintiff as claimed by the Plaintiff, but by her father, then she may be entitled to claim share in the property.

4. Taking overall view of the matter, therefore, in my opinion, it will not be appropriate to interfere with the impugned order at this stage. The order directing joinder of the party is an order of interlocutory nature and therefore that order is also capable of being challenged with the final order that may be passed in the suit. For all these reasons, therefore, petition cannot be entertained. It is disposed of.

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